Taxpayers' Rights Advocate's

2003-04

PROPERTY TAXES ANNUAL REPORT

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Letter to The Executive Director

October 2004

Mr. Ramon J. Hirsig Executive Director

Dear Mr. Hirsig:

I am pleased to present the Taxpayers' Rights Advocate's 2003-04 Property Taxes Annual Report. This report:

- Highlights the accomplishments of the Taxpayers' Rights Advocate Office during the past year,
- Identifies current issues we are working to resolve, in tandem with agency management, and
- Identifies emerging issues we recommend for consideration in the coming year.

Throughout the year we worked with staff of the Property and Special Taxes and Legal Departments, State Controller's Office staff, county assessors and tax collectors, and other state and local government officials, to address concerns raised by taxpayers and their representatives. This year the focus of our office has been on the grandparent-grandchild exclusion, loss of the parent-child exclusion after transfer to a third party, the "Proposition 13" reappraisal exclusions related to missed filing periods, correcting a supplemental assessment calculation, and various revisions to laws, rules, handbooks, statements, and forms. Through the cooperation of the Property and Special Taxes Department and the Customer and Taxpayer Services Division, we employed educational strategies, including media, taxpayer outreach, and preparing information for the Board's website, to improve taxpayer understanding and voluntary compliance with the state's tax laws.

We look forward to continue working with staff and the public at large as we identify trends and issues, develop viable solutions to these issues, resolve taxpayer problems, and strive to better serve our customers.

Respectfully submitted,

Todd C. Gilman

Taxpayers' Rights Advocate

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TAXPAYERS' RIGHTS ADVOCATE OFFICE

In January 1989, the original Taxpayers' Bill of Rights was established to ensure that the rights, privacy, and property of California taxpayers were adequately protected in the assessment and collection of sales and use taxes. Effective January 1993, the Special Taxes Bill of Rights was established, expanding Bill of Rights statutory authority to the special taxes programs administered by the Board of Equalization (Board). As the Board assumes responsibility for new special taxes and fee programs, the Bill of Rights protections are added for each program. Since these programs primarily impact business owners, they will be referred to generally as the Business Taxpayers' Bill of Rights, covering both sales and use taxes and the various special taxes and fees.

The Morgan Property Taxpayers' Bill of Rights, effective January 1, 1994, is found in section (δ) 5900, et seg., of California's Revenue and Taxation (R&T) Code. It governs the assessment, audit, and collection of property taxes. with the goal to ensure that taxpayers receive fair and uniform treatment under the property taxation laws. It requires the Board to designate an Advocate independent of, but not duplicative of, the Board's existing property tax programs, to report directly to the Board's Executive Director. The Advocate is specifically responsible for reviewing property tax matters from the viewpoint of the taxpayer, and reviews, reports, and makes recommendations to the Board's Executive Director on any necessary changes which will help accomplish the Bill of Rights provisions.

The Taxpayers' Rights Advocate (TRA) Office:

- facilitates resolution of taxpayer complaints or problems;
- monitors various Board tax and fee programs for compliance with the Taxpayers' Bill of Rights;
- recommends new procedures or revisions to existing policy to ensure fair and equitable treatment of taxpayers;

- participates on various task forces, committees, and public forums; and
- holds mandated Taxpayers' Bill of Rights hearings to provide the public, county assessors, and other local agency representatives with an opportunity to express their concerns, suggestions and comments to the Board Members.

The TRA Office generally assists taxpayers who have been unable to resolve a matter through normal channels, when they want information regarding procedures relating to a particular set of circumstances, or when there appear to be rights violations in the property taxes, audit, or compliance areas. Taxpayers also call to convey their frustration, seeking assurance or confirmation that staff or local county action is lawful and just.

In cases where the law, policy, or procedures do not allow any change to the staff action, but a change appears justified, the TRA Office is alerted to a potential area that may need clarification or modification. Several of the past Taxpayers' Advocate's annual report suggestions, recommendations for policy or procedural changes, and legislative proposals have resulted from these types of contacts with taxpayers.

The TRA Office provides assistance to taxpayers, the county, and Board staff to facilitate better communication between parties and eliminate potential misunderstandings. Taxpayers are provided information on policies and procedures so they can be better prepared to discuss and resolve their issues.

A major difference between the Business Taxpayers' Bill of Rights and the Property Taxpayers' Bill of Rights is in the resolution of taxpayer complaints. [Since the Board of Equalization is the agency responsible for assessing and collecting business taxes, when taxpayers' complaints about the Board of Equalization business taxes programs are received in the TRA Office, the staff has direct

access to all the documents and Board staff involved in the taxpayers' issues. In these cases the TRA Office serves as a liaison between the taxpayer and the Board program staff to solve the problem. In addition, the Advocate has the ability to stay collection of a levy, and can order the release of a levy and the refund of up to \$1,500 upon finding that a levy threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.]

In responding to property taxpayers' complaints, however, the TRA Office works with county assessors, tax collectors, and auditor-controllers (most of whom are elected officials), plus clerks to the county boards of supervisors. The Morgan Property Taxpayers' Bill of Rights provides the TRA Office with broad oversight, but there is no authority to mandate or overturn local actions. So far, however, the Office has been successful in soliciting cooperation and possible change from local county officials.

STATUS OF ISSUES IDENTIFIED AT PREVIOUS PROPERTY TAXPAYERS' BILL OF RIGHTS HEARINGS

Speakers and testimony presented at last year's annual hearings in Culver City and Sacramento identified the following property taxes issues, and staff addressed them as follows.

Requirements to notify taxpayers of delinquent and unpaid taxes and impending tax sales may be inadequate.

The testimony noted a sale of property where the property owner lost his home due to a prior year's delinquency of property taxes, even though the current taxes had been paid; the amount owed was less than one percent of the property's value.

The TRA Office worked with the Legislative Division, State Controller's Office (SCO) staff, a state senator, and others; legislation was introduced, but did not pass. [See the "Tax-Defaulted Sales of Owner-Occupied Homes" discussion in the "Current Issues" section.]

Persons age 55 or over can transfer the base year value of their home to a replacement home once.

The taxpayer used the exclusion in R&T Code § 69.5, 18 years ago. The taxpayer was obligated to move yet again to be within safe range of doctors, hospital, and family, and wanted to be able to use the exclusion a second time, but this is not permitted by the law.

The taxpayer understood the suggestion would require changes to the R&T Code and asked that the Board support legislation. There are currently no amendments proposed in this area. The TRA Office will work with the California Assessors' Association, the Legislative Division, the Property and Special Taxes Department, and the Legal Department, to explore the feasibility of making this change, examining the fiscal impact, if any, to the State or to local governments.

Persons age 55 or over and disabled persons can transfer the base year value of their home to a replacement home, but they must file the claim within three years or lose the benefit forever.

The taxpayer wanted to see legislation amending R&T Code § 69.5, allowing prospective only claims

after three years similar to the provisions of R&T Code δ 63.1 for the parent-child exclusion.

The TRA Office has worked with the taxpayer, the Legislative Division, the county assessors, and legislators' offices to submit legislative proposals that would correct this inequity, most recently in Senate Bill 1062, but the proposals have not been approved. The TRA Office is continuing its efforts and is staying in contact with the taxpayer and the taxpayer's county assessor. [See the "'Proposition 13' Reappraisal Exclusions — Missed Filing Period" discussion in the "Current Issues" section.]

Taxpayers wanted to work out a payment plan with the county tax collector's office, but had been told this couldn't be done.

A large escape assessment was levied by the assessor's office after they discovered property had not been reappraised following the purchase of the taxpayers' home in 1999.

After the hearing a representative from the assessor's office and TRA Office met with the taxpayers. The assessor's representative and SCO staff contacted the tax collector's office, and referred to the taxpayers' rights under R&T Code § 4837.5. The taxpayers subsequently initiated a four-year installment plan.

Value Restoration After a "Prop 8" Reduction in Value.

The taxpayer was questioning how values were restored following his successful appeal which resulted in declines in value.

The TRA Office worked with the taxpayer and the county assessor's office. The taxpayer filed an appeal, and in discussions with the assessor's office discovered errors in the building records for his property. The taxpayer is continuing discussions with the assessor's office to insure that the correct values are enrolled.

ACCOMPLISHMENTS

Two primary functions of the TRA Office are to:

- 1. Ensure fair and equitable treatment of all taxpayers in the assessment and collection of taxes.
- 2. Identify changes in policies, procedures, regulations, and statutes that will enhance taxpayer communication and compliance and improve the relationship between taxpayers and government.

As a result of specific contacts with taxpayers and local government authorities, suggestions are developed and considered. With the cooperation and assistance of Board staff, other state agencies, and county government officials, the following was accomplished this past year.

Taxpayer Contacts

TRA Office responded to 182 individual property taxpayers. [Also see "Taxpayer Contacts with TRA Office" on page 9 and the chart on page 11 that displays the types of contacts received and the counties from which they came.]

Revision Efforts

The TRA Office participated with the Board's Property and Special Taxes Department, industry representatives, and county assessors, in the revisions of various rules and handbooks and in the development of legislative proposals.

Media Outreach

The TRA Office worked with the Customer and Community Outreach Services Section and the Media Relations Officer, using the media to inform taxpayers of various critical property taxes assessment dates, and provide them with property taxes information throughout the year.

CURRENT ISSUES

In coordination with program and legal staff, other state agencies, and local government officials, solutions are being developed to address the following issues identified in last year's Property Taxpayers' Bill of Rights Annual Report.

"Proposition 13" Reappraisal Exclusions — Missed Filing Period

In 1978 the voters approved Proposition 13, which added Article XIII A, "Tax Limitation", to California's Constitution. This initiative constitutional amendment limited ad valorem taxes on real property to one percent of value, established a 1975-76 assessed valuation base for property tax purposes, limited annual increases in value, and provided for reassessment after transfer or construction.

Subsequently the Legislature placed 14 propositions on the ballot which have been approved by the voters amending Article XIII A. Many of these amendments exclude some class of property owners from reappraisal following a change in ownership or new construction, but all contain required filing deadlines in their implementing statutes (legislation).

Changes in ownership and new construction excluded from reassessment include transferring a base year value to a replacement property for senior citizens and severely disabled homeowners acquiring or building a new home.

These constitutional amendments required the Legislature to work on the details of the exclusion. In many instances the Legislature has required that the claim be filed within three years of the qualifying event. When the exclusion is granted the lower value is enrolled and appropriate refunds may be claimed. [See Chapter 2, "Change in Ownership and Purchase," of Part 0.5 of Division 1 of the R&T Code.]

For those taxpayers knowledgeable about these exclusions, three years seems like an

adequate period of time to file a claim. However, through numerous phone calls and other contacts, the TRA Office, Property and Special Taxes Department, and assessors are hearing that many homeowners have not learned that they could have retained a lower base year value, until five or ten years after the event which would have allowed the exclusion. Examples heard by the TRA Office include the homeowner who sells one home and buys another dwelling for retirement, but doesn't learn of the exclusion until several years later. There is no provision allowing taxpayers in this situation to make a late claim and prospectively receive the benefits they originally would have been entitled to.

In 1997, the parent-child and the grandparent-grandchild exclusions were amended to permit filing past the three-year period and allowing prospective relief, where the property hadn't subsequently transferred to a third party. This change became effective January 1, 1998. The Board is required by law to track parent-child exclusions; the 1997 change has not resulted in any significant increased administrative costs.

Queries and complaints continue to surface regarding the filing time period for the other exclusions. Assessors forward calls to the TRA Office, as do legislators. In 2002-03 the TRA Office worked with the Legislative Division to develop a proposal amending R&T Code § 69.5, which permits the transfer of a home's base-year value to a replacement dwelling. The language was placed in Senate Bill 1062, but unfortunately the provisions were amended out because of budget concerns — the fiscal impact had been estimated to be less than \$100,000 per year. The TRA Office will work with Legislative Division staff to address the Legislature's concerns.

Grandparent-Grandchild Exclusion

Proposition 193, approved March 26, 1996, amended section (2) of Article XIII A of the

California Constitution. This part of "Proposition 13" provides that certain transfers between grandparents and their grandchildren, as defined by the Legislature [See R&T Code § 63.1.], may be excluded from causing a change in ownership reappraisal. The grandparent-grandchild exclusion only applies if all the parents of the grandchild(ren) who qualify as children of the grandparent(s) are deceased as of the date of the change in ownership.

Proposition 193 was an extension of Proposition 58, which first added subdivision (h) to section 2 of Article XIII A when it was approved November 4, 1986. It provides that certain transfers between parents and their children, as defined by the Legislature, may be excluded from change in ownership. For these exclusions the Legislature determined in R&T Code § 63.1 that, in certain circumstances, "children" includes adopted children, stepchildren, daughters-in-law, and sons-in-law.

The TRA Office and the Property and Special Taxes Department have received calls from county assessors' offices requesting advice on the availability of the exclusion in situations where grandparents have fully assumed parental responsibility for raising grandchildren. In cases like these there is general agreement that the intent of Proposition 193 was to grant an exclusion, but the law, as written, doesn't permit the exclusion if the grandparents did not adopt their grandchildren. The counties could not grant the grandparent-grandchild exclusion because of the statutory definition of "parent" and "child" in R&T Code 63.1.

The broad definition of "children" works to the benefit of those claiming the parent-child exclusion, but it works against the claimants of the grandparent-grandchild exclusion. The legislative advocates of Proposition 193 intended that it permit property to be transferred from grandparents to their own grandchildren in cases where both parents were deceased, but the broad definition of "parents" includes more than just birth and adoptive parents.

The TRA Office will work with the Legislative Division and Property and Special Taxes Department to develop legislation that will address this inequity.

Value Restorations and Proposition 8 Litigation

Litigation in Orange County questioned the methodology for enrolling an assessed value increased after a decline in value assessment. R&T Code § 51 requires the assessor to enroll the lesser of the fair market value or the adjusted base year value, and this results in assessed value increases in excess of two percent under those circumstances. In 1998 Renee Bezaire and Robert Pool, Orange County homeowners, initiated a process that challenged this methodology as unconstitutional. During December 2001 the Orange County Superior Court ruled in favor of Bezaire and Pool, declaring the assessors' practice unconstitutional. In March 2004, the Fourth District Court of Appeals reversed the Superior Court's judgment.

The TRA Office continues to receive calls from persons interested in the Bezaire-Pool case in Orange County. Two other county courts have reached a decision opposite that of the Orange County Superior Court. That is, these other courts held that the two percent limitation on annual value increases imposed by Article XIII A applies only to base year value increases and not to increases in value when the county assessor has enrolled the Proposition 8 value, i.e., the lesser fair market value.

The TRA Office will continue to explain the law and the courts' decisions to taxpayers, and advise them to file a claim for refund if they believe the application of the Bezaire-Pool decision to their property would result in a lowering of their assessed value.

The TRA Office continues to work with the Property and Special Taxes Department to keep the public informed of the Bezaire-Pool appeal. The TRA Office plans to develop a series of FAQ's on the subject for inclusion on the Board's website.

[On July 21, 2004, the California Supreme Court denied the petition for review, thereby upholding the decision of the Court of Appeals.]

Tax-Defaulted Sales of Owner-Occupied Homes

Last year we reported the tragic case of an elderly taxpayer who owned his home free-and-clear of any mortgages or trust deeds and had it sold at a county tax sale because of delinquent property taxes. Although the current year's taxes had been paid, there was an unpaid delinquency that had been outstanding for more than five years; the amount owed was less than one percent of the property's value. The tax collector provided notice that the taxdefaulted property would be sold because of the delinquent taxes. Personal service of the notice of sale was attempted. Because the home was located in a gated community, the tax collector's agent could not accomplish personal service of the notice of sale, and instead the notice of sale was posted in a public place, at the community gate. Unfortunately, the homeowner said the notice of the pending sale was never received, and the home was subsequently sold at the public auction.

There were several signals that, if noticed, might have triggered follow-up attempts to contact the homeowner. 1) The property was receiving the homeowners' exemption, an indication that the owner lived there. 2) The mailing address was the same as the property address, again indicating that the taxpayer lived on the property. 3) Tax bills were not being sent to a lender, indicating the taxpayer might own the property outright, and therefore have a stronger incentive to pay the delinquent taxes, which were minor when compared to the property value. 4) Taxes had been paid for the current, and recent, years — the delinquency was over five years old.

Since the sale, the local county tax collector has made suggestions that would improve the process of collecting some delinquent property taxes and delay the sale of some tax delinquent properties. The proposals include annually sending out a separate delinquency notice to certain taxpayers and attempting to arrange a pre-sale consultation with certain taxpayers prior to the sale of their property.

Last year State Senator Jackie Speier proposed legislation in Senate Bill (SB) 663, which would have revised notification requirements before the sale of a tax-defaulted owner-occupied home. The proposals required additional notification attempts, which would result in additional time before a tax defaulted property could be sold. The bill was supported by the Los Angeles County Board of Supervisors, California Tax Reform Association, Congress of California Seniors, and County Treasurers and Collectors Association; there was no registered opposition.

Many times taxpayers let property go delinquent because the value of the property is less than the taxes owed. Adding additional requirements to the tax-sale process could increase costs to the point where they would be greater than the proceeds realized from the sale. Although SB 663 did not advance, the TRA Office will continue to work with the State Controller's Bureau of Tax Administration for solutions that will further protect our taxpayers and their rights without further burdening the county, perhaps identifying procedural or standards changes that could be accomplished administratively at the local level.

Correcting a Supplemental Assessment Calculation

In last year's annual report we discussed the situation where properties had been properly appraised, but errors had been made in calculating the supplemental assessment; the subsequent corrections placed a financial hardship on some of the affected taxpayers.

The supplemental assessment statutes, R&T Code § 75, et seq., do not address the situation where the appraised values are valid, but an error is made in the calculations. Although the statutes are not specific regarding enrollment, due dates, and payments in this

unique situation, it does not appear that legislative changes are required at this time. However, the TRA Office will continue to monitor this area of property tax assessment.

Loss of Parent-Child Exclusion after Transfer to Third Party

In 1990, Assembly Bill (AB) 3843 was passed, amending R&T Code § 63.1, to require the transferee to file a claim for change of ownership exclusion prior to the transfer of the real property to a third party. The bill was an attempt to eliminate retroactive corrections to the roll. The sponsor estimated that the time limits were not being met by approximately 25% of the affected parties. However, it was predicted even after passage of AB 3843 that a substantial number of taxpayers would inadvertently lose their right to the constitutional exclusion, resulting in a bill for taxes long after they had sold the property. In essence, the lost exemption is due to lack of knowledge and information.

As identified in our annual report last year, this issue continues to be a major source of complaint. The requirement to file for an exclusion on inherited property prior to its sale is not a widely known provision and is often overlooked, even by some real estate and tax professionals. Conversations with four major counties (Los Angeles, San Bernardino, San Diego, and San Mateo) revealed their common concern about the number of taxpayers denied this exclusion. The TRA Office made eight recommendations including targeting interested parties related to specific property tax laws to help inform the community. For a variety of valid reasons, not all counties were able to implement all the recommendations. However Los Angeles County, who incorporated all the recommendations three years ago, reports substantial reductions in complaints and appeals with each successive year. The other counties did not see a definitive change in complaints.

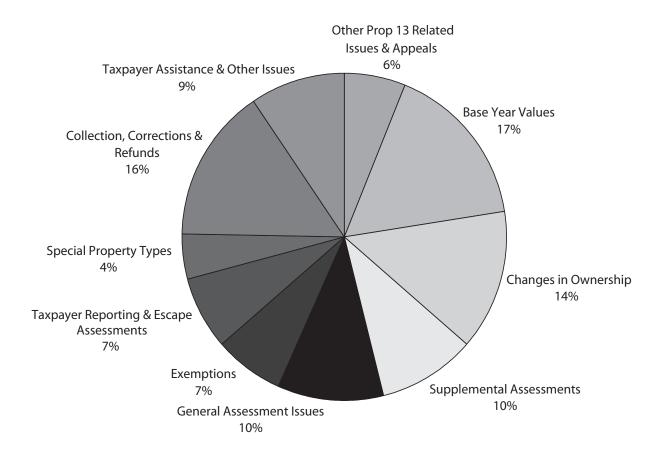
TAXPAYER CONTACTS WITH TRA OFFICE

The TRA Office assisted 182 individual property taxpayers and representatives last year. All contacts with taxpayers and their representatives are important and contribute to better understanding and improvement of the property taxation system. These contacts offer the opportunity to review a given specific situation — a situation that is sometimes indicative of a statewide issue which needs to be addressed through changes in the law, rules, policies, or procedures.

The following chart provides a breakdown of last year's contacts:

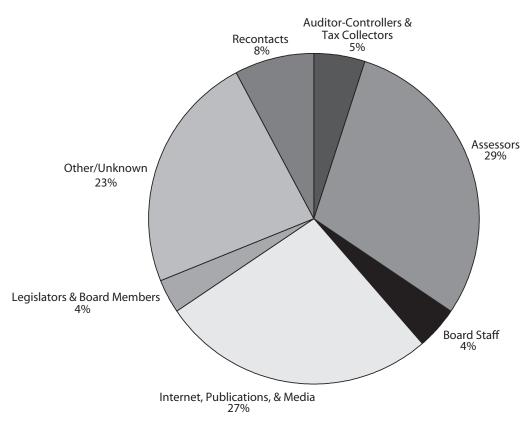
Local county assessment offices (assessors, clerks for assessment appeals boards and local boards of equalization, auditor-controllers, and tax collectors) referred many of these contacts to the TRA Office. These local officials recognize the role of the TRA Office in "... the promotion of enhanced understanding regarding the property tax system" [The Morgan Property Taxpayers' Bill of Rights, R&T Code § 5901(a)].

Types of Issues



The following chart shows the sources of referrals to TRA Office:

Sources of Referrals



Sometimes the county assessor, tax collector, or auditor-controller's office will refer the taxpayer to the TRA Office so the taxpayer and/ or their representative is provided an unbiased independent review of their situation. On a few occasions the person calling was concerned about the fairness of treatment they received from the local assessment office(s). The officials in charge of these offices are concerned with taxpayer service and the potential lack of professional treatment. When they refer someone to the TRA Office (or when a contact calls directly), the taxpayer will either receive an affirmation of the local policy or procedure, or the local official will receive feedback from the TRA Office. In the latter case the TRA Office.

might discuss possible improvements in their operations to make them more "taxpayer friendly," or offer suggestions for the correction or resolution of errors and other problems.

Calls are also received from people who have learned about the TRA Office from the media, a library, or another state agency. They may be concerned about the fairness of the treatment they received from an assessment office. In addition to working with the person, the TRA Office contacts the office involved in order to help the taxpayer resolve the problem, when possible.

Contacts Received, by County and by Office

Appeals &

County	Assessor	Equalization Boards	Tax Collector	Auditor-Controller	Other	TOTAL
Alameda	3			2		5
Alpine	1					1
Calaveras	2	1				3
Del Norte	1					1
Fresno	2					2
Glenn			1			1
Humboldt	3					3
Imperial	1					1
Inyo	3					3
Kern	1					1
Lake	1		1			2
Lassen	4					4
Los Angeles	13	2	2		1	18
Madera	2					2
Marin	3					3
Mono	5				1	6
Monterey	2					2
Nevada	1					1
Orange	6		1			7
Placer	2		1			3
Riverside	6		1			7
Sacramento	7		2			9
San Bernardino	16	3				19
San Diego	7	1				8
San Francisco	4					4
San Joaquin	1		2	1		4
San Mateo	2	1				3
Santa Clara	7		1			8
Siskiyou	-		1			1
Solano	1					1
Stanislaus	3					3
Sutter	1					1
Tulare	2					2
Ventura	2					2
Yolo	5					5
Yuba		1				1
Statewide ¹	7	·		1	1	9
FTB ²	-				9	9
SCO					4	4
Board ³					6	6
TRA Office ⁴					7	7
TOTALS:	127	9	13	4	29	182
IOIALS.	14/	,	13	7	29	102

¹Contact raised question or issue that went beyond one particular county.

²Most of these were property tax assistance questions.

 $^{^{3}\}mbox{Property}$ and Special Taxes Department contacts included questions about mapping.

⁴Questions about taxpayers' rights or the Morgan Property Taxpayers' Bill of Rights.